

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**Agenda ID #20841
RESOLUTION E-5215
September 15, 2022**

R E S O L U T I O N

RESOLUTION E-5215: Certification of East Bay Community Energy's Energy Efficiency Program Administration Plan.

PROPOSED OUTCOME:

- This Resolution certifies East Bay Community Energy's request in advice letter 28-E and supplemental advice letter 28-E-A to Elect to Administer its Energy Efficiency Program Administration Plan, submitted pursuant to Public Utilities Code Section 381.1(e) and (f) and California Public Utilities Commission direction in Decision 14-01-033.

SAFETY CONSIDERATIONS:

- There are no safety considerations associated with this resolution.

ESTIMATED COST:

- The California Public Utilities Commission approves a budget for East Bay Community Energy of \$13,463,049 over the course of its three-year Energy Efficiency Program Plan. This funding will come from the Pacific Gas and Electric Company's Energy Efficiency Portfolio Budget.

By Advice Letter 28-E filed on October 22, 2021, and supplemental Advice Letter 28-E-A was filed on March 10, 2022.

SUMMARY

Public Utilities Code Section (PU Code Section) 381.1, gives Community Choice Aggregators (CCAs) the option to elect to become an administrator of cost-effective energy efficiency (EE) programs, subject to California Public Utilities Commission (CPUC) adoption of a CCA's EE Program Administration Plan (EE Plan) that has been approved by the CCA's governing board. East Bay Community Energy (EBCE) submitted a three-year budget request of \$13,463,049 to the CPUC on October 2, 2021, via Tier 3 advice letter (AL) 28-E and supplemental AL 28-E-A on March 10, 2022.

This resolution approves EBCE's request to elect to administer its EE Plan according to the criteria set forth in PU Code Sections 381.1(e) and (f) (1) - (6) and CPUC direction in Decision (D.)14-01-033, on enabling CCAs to administer EE programs. The budget that EBCE requested to receive to fund its EE Plan is \$13,463,049. Pacific Gas and Electric Company (PG&E) is ordered to transfer \$13,463,049 to EBCE for its three-year EE Plan.

BACKGROUND

PU Code Sections 331.1, 366.2, and 381.1 enable cities and or counties to form a CCA. The legislation allows CCAs to offer procurement services to electric customers within their boundaries. Senate Bill 790 (Leno) modified PU Code Section 381.1(a) and added subsections (d)-(g). Subsections (a)-(d) authorize a CCA to "apply" to administer cost-effective EE and conservation programs by "allow[ing] CCAs to access EE funds from, and provide EE programs to, both their customers *and* other utilities' customers."¹ CCAs pursuing this approach must file a formal application to administer EE, which complies with the CPUC's prior decisions and resolutions regarding the content of Investor-Owned Utility's (IOUs') applications to administer EE.² An alternative "elect to administer (ETA)" approach differs from the "apply to administer" approach in that PU Code Section 381.1(e) and (f) expressly limits EE offerings to customers served by the CCA. CCAs that pursue the "ETA" option do not need to file applications – they file their EE Plans as Tier 3 ALs.³

¹ D.14-01-033, COL 4.

² D.14-01-033, OP 2.

³ D.14-01-033, OP 6.

PU Code Section 381.1(e) states:

The impartial process established by the Commission shall allow a registered community choice aggregator to elect to become the administrator of funds collected from the aggregator's electric service customers and collected through a non-bypassable charge authorized by the Commission, for cost-effective energy efficiency and conservation programs, *except those funds collected for broader statewide and regional programs authorized by the Commission.* (Emphasis added)

PU Code Section 381.1(f) states:

A community choice aggregator electing to become an administrator of energy efficiency shall submit an EE Plan, approved by its governing board, to the Commission for the administration of cost-effective energy efficiency and conservation programs for the aggregator's electric service customers that includes funding requirements, a program description, a cost-effectiveness analysis, and the duration of the program. The Commission shall certify that the EE Plan submitted does all the following:

1. Is consistent with the goals of the programs established pursuant to PU Code Sections 381.1 and 399.4;
2. Advances the public interest in maximizing cost-effective electricity savings and related benefits;
3. Accommodates the need for broader statewide or regional programs;
4. Includes audit and reporting requirements consistent with the audit and reporting requirements established by the Commission pursuant to this PU Code Section;
5. Includes evaluation, measurement, and verification protocols established by the community choice aggregator; and
6. Includes performance metrics regarding the community choice aggregator's achievement of the objectives listed in paragraphs (1) to (5), inclusive, and in any previous plan.

On June 20, 2012, the assigned Administrative Law Judge issued a ruling in Rulemaking (R.) 09-11-014 regarding procedures for CCAs to become administrators of EE programs through PU Code Section 381.1(a) – the application process to administer an EE program to all customers in their service territory – and through PU Code Section 381.1(e) and (f), the election process to administer EE programs only to the CCA’s customers. Then on January 23, 2014, the CPUC issued Decision (D.) 14-01-033 Enabling Community Choice Aggregators to Administer Energy Efficiency Programs which provides CCAs procedures for ETA EE programs.

Ordering Paragraph (OP) 6 of D.14-01-033 establishes that CCAs that elect to administer EE programs shall file their EE Plan through a Tier 3 AL, which is not considered either effective or approved without a CPUC resolution.⁴ OP 7 of D.14-01-033 asserts the materials submitted by a CCA who elect to administer EE programs must contain sufficient information for the CPUC to certify the CCA’s EE Plan meets the six requirements in PU Code Section 381.1(f).⁵ OP 8 of D.14-01-033 directs the CCAs to also conduct financial and management audits of its EE programs and provide a copy of the audits to the CPUC.⁶ Finally, D.14-01-033 set the formula for the maximum funding that a CCA who pursue the ETA route can request when establishing a budget:

CCA maximum funding = Total electricity energy efficiency
non-bypassable charge collections from the CCA’s customers – (total
electricity EE non-bypassable charge collections from the CCA’s customers
* % of the applicable IOU portfolio budget that was dedicated to statewide
and regional programs in the most recently authorized program cycle).^{7,8}

On October 22, 2021, EBCE filed their EE Plan via AL 28-E and later filed a supplemental 28-E-A on March 10, 2022. Their supplemental 28-E-A provided the CPUC program details on EBCE’s proposed program, as well as their estimated maximum funding based on a formula set forth in D.14-01-033.

⁴ D.14-01-033, OP 6.

⁵ D.14-01-033, OP 7.

⁶ D.14-01-033, OP 8.

⁷ ALJ’s June 20, 2012 Ruling on REN and CCA Administration of EE at pg 10.

⁸ D.14-01-033, pg 22.

EBCE's Proposed EE Plan

EBCE proposes a Commercial pay-for-performance (P4P) program with a budget of up-to \$13,463,049 over three years. EBCE's program will utilize P4P approaches to deliver cost-effective projects for their commercial customers. EBCE will focus on projects with high potential opportunities for peak load management and building electrification. EBCE will use its existing data and analytics capabilities to assist program implementers identifying the highest opportunity projects. EBCE will pay incentives for cost-effective savings measured at the meter utilizing CalTRACK methodologies.

The program will be open to eligible vendors to submit projects and receive incentives on a portfolio of projects. EBCE adds that the program will place a high emphasis on demand management strategies, including permanent base load reduction as well as controls-based load shifting approaches. Enrolled customers in the program will also be educated on the potential impacts of time-of-use rates and offered tools and strategies for adapting their business model to new and emerging rate structures. EBCE's program proposes to support the installation of the following measure types:

- Refrigeration controls;
- Lighting measures;
- Building envelope;⁹
- Retrocommissioning;¹⁰
- Building electrification measures; and
- Load management controls.

EBCE notes that this list is not exhaustive, and they will explore and incorporate new offerings over time that will advance and align with the state goals while supporting new local emerging markets. Examples may include, but are not limited to:

- Commercial building electrification; and

⁹ Building envelopes are defined as the outer shell of a building that separates the conditioned space from the unconditioned space, including resistance to air, heat, water and noise.

¹⁰ Retrocommissioning is defined as a program that modifies or repairs existing equipment to ensure that it works as intended. (Source: Pacific Gas and Electric Resource Savings Rulebook, Version 1.0, pg 117. Located at: [https://www.pge.com/pge_global/common/pdfs/for-our-business-partners/energy-efficiency-solicitations/PGE%20Platform%20Rulebook%20V1.0%20Final_PC2%20\(2\).pdf](https://www.pge.com/pge_global/common/pdfs/for-our-business-partners/energy-efficiency-solicitations/PGE%20Platform%20Rulebook%20V1.0%20Final_PC2%20(2).pdf).

- Combined demand response and EE installations.

EBCE forecasts that the program will have at least a first year Total Resource Cost (TRC) of 1.07 and a Program Administrator Cost (PAC) of 1.57. EBCE projects that the program's TRC and PAC will increase in subsequent implementation years, after the program is ramped up. Finally, EBCE expects that the three-year gross energy savings for the program will be 30,327,105 kWh, with demand savings of 3,463 kW.

EBCE's Compliance with Maximum Funding Request

EBCE requested a total budget of \$13,463,049 to implement and evaluate their Commercial P4P program over a three-year period. The formula established for the maximum funding is as follows:

CCA maximum funding = Total electricity energy efficiency non-bypassable charge collections from the CCA's customers – (total electricity EE non-bypassable charge collections from the CCA's customers * % of the applicable IOU portfolio budget that was dedicated to statewide and regional programs in the most recently authorized program cycle.¹¹

D.14-01-033 adopted the definitions for "regional" and "statewide" programs to be excluded from the maximum funding a CCA can request as follows:

- "Statewide Programs" – Programs, as defined and designated by the CPUC, that are offered throughout the four IOU service territories on a generally consistent basis. Evaluation, Measurement and Verification budgets are included in statewide programs, as these budgets are overseen by CPUC staff across all four IOUs on a consistent basis.¹²
- "Regional Programs" – Programs offered to all eligible customers throughout an individual IOU's service territory in which a CCA is offering service, but not necessarily offered in other IOU service territories. This includes state and institutional

¹¹ D.14-01-033, pg 22.

¹² D.14-01-033, pg 25.

government partnerships. This does not include any programs that are offered only in a geographic subset of an IOU territory.¹³

In AL 28-E-A, EBCE provides the following inputs to the formula for the maximum funding it can request. First, the total electricity EE non-bypassable charge collections from the EBCE's customers is projected to be \$133,203,953.98 for 2022.¹⁴ Secondly, EBCE estimates that \$7,444,580 out of PG&E's total budget of \$220,967,635 or 3.37% is dedicated to local programs.¹⁵ EBCE then multiplied \$133,203,953.98, its total projected electricity EE non-bypassable charge collections, by 0.0337 to get a three-year cap of \$13,463,049.¹⁶

EBCE's Compliance with Meeting Criteria Established in Public Utilities Code Section 381.1(f) (1) - (6)

Pursuant to PU Code Section 381.1(f), the CPUC must certify that a CCA's proposal to ETA a ratepayer funded EE Plan meet the six criteria, specified in paragraphs (1) - (6), which include:

1. Is consistent with the goals of the programs established pursuant to PU Code Sections 381.1 and 399.4;
2. Advances the public interest in maximizing cost-effective electricity savings and related benefits;
3. Accommodates the need for broader statewide or regional programs;
4. Includes audit and reporting requirements consistent with the audit and reporting requirements established by the CPUC pursuant to this section;
5. Includes evaluation, measurement, and verification protocols established by the community choice aggregator; and
6. Includes performance metrics regarding the community choice aggregator's achievement of the objectives listed in paragraphs (1) to (5), inclusive, and in any previous Plan.

¹³ Ibid.

¹⁴ EBCE AL 28-E-A, Election to Administer Energy Efficiency Programs, filed March 10, 2022, pg 5.

¹⁵ Ibid.

¹⁶ Ibid.

EBCE provided the following responses in supplemental AL 28-E-A to justify its proposed EE Plan and compliance with the six criteria in PU Code Section 381.1(f).

Consistency with the Goals in Public Utilities Code Sections 381.1. and 399.4

EBCE states that their program aligns with CPUC goals as EBCE will enroll customers into an EE incentive program that will provide cost-effective energy, demand and emissions reductions for EE and building electrification measures. EBCE's program will leverage P4P program approaches to offer cost-effective projects for commercial customers. Projects will focus on high-potential opportunities for peak load management and building electrification.

Finally, EBCE adds they will comply with PU Code Section 399.4(b)(1) requirements that participants must follow applicable permitting requirements where applicable. EBCE will ensure that participating contractors comply with state building code requirements. To ensure compliance with 399.4(b)(1), EBCE will require all installing contractors or non-residential customers who received a rebate or incentive to certify that they have complied with Title 24 California Building Standards Code.

Advances the Public Interest in Maximizing Cost-Effective Electricity Savings and Related Benefits

EBCE responds that its proposed program, complies with cost-effectiveness requirements in PU Code Section 381.1, as the program has a forecasted portfolio TRC of 1.07 and forecasted PAC of 1.57.

Accommodation of Statewide and Regional Programs

Both PG&E and the Bay Area Regional Energy Network (BayREN) are program administrators (PAs) offering ratepayer funded EE programs in EBCE's service area. EBCE claims they will work closely with both PAs to verify that customers have not been double-enrolled and coordinate on marketing and outreach efforts where appropriate. EBCE claims that at a minimum, coordination efforts will require customers to verify that they have not received, or do not plan to receive, other PA offered incentives for their projects. For applications received from non-EBCE customers, EBCE will refer them to either a PG&E or BayREN program and work with staff at both PAs to help those customers find the best suited program for their needs.

EBCE adds that the rollout of third-party programs has increased the difficulty of local coordination, because there are many programs for which many details are still forthcoming, and because these implementers are under no obligation to coordinate with CCAs to minimize overlap and customer confusion. To help mitigate this difficulty, EBCE plans to coordinate closely with PG&E to encourage collaboration between selected third-party vendors – particularly those that have not launched – and to minimize customer confusion to the greatest extent possible.

Auditing and Reporting

EBCE currently performs annual financial audits using the generally accepted accounting principles (GAAP) specific to government entities. These reports are publicly available and are currently accessible on EBCE's website. As a Joint Powers Authority, once EBCE's EE Plan is certified and their program launches, current auditing procedures will be extended to include EE program administration data. This will ensure appropriate accounting controls for EE program funds.

Per the requirements of the Government Accounting Standards Board (GASB), EBCE will provide discussion and analysis to supplement the basic financial statements. To evaluate the effective use of resources and management procedures, EBCE will also complete all regulatory filings and reports as directed by CPUC staff. These documents will provide the results of program efforts that can be evaluated against the performance metrics identified by EBCE, including adherence to cost-effectiveness requirements.

Evaluation Measurement and Verification Protocols

EBCE states that they will contract with an independent third-party to perform process evaluations or market studies to assess the effectiveness of their program implementation activities and evaluate challenges and opportunities in EBCE's service territory. The studies will be performed according to the CPUC's oversight process of IOU Evaluation Measurement and Verification ("EM&V") projects as detailed in EBCE's EM&V Plan. EBCE acknowledges that they will be subject to the same protocol as all other PAs for CPUC-directed impact evaluations to determine actual energy savings, benefits and costs as directed in D.05-01-055. EBCE expects to dedicate no more than 3% of their total budget during the three-year program to EM&V efforts.

Performance Metrics

In addition to savings and demand metrics, EBCE offers the following Performance Metrics to indicate progress toward meeting the goals and objectives of the CPUC and EBCE's goals. The specific objective of PU Code Section 381.1(f) that each metric addresses (if applicable) is included in parenthesis, see below:

- Program energy savings (381.1(f)(2));
- Tracking and serving underserved communities, including hard-to-reach (HTR) commercial customers (381.1(f)(1));
- Cost-effectiveness tool output;
- Tracking the Program cost-effectiveness annually (381.1(f)(4))
- Number of projects referred to other EE or other Distributed Energy Resource ("DER") programs (381.1(f)(3))
- Percentage of recommended measures installed by customers (381.1(f)(4));
- Percentage of customers who receive electrification measures;
- Percentage of customers who receive education on time of use rates and peak management tools;
- Increase in participation among disadvantaged community customers relative to existing IOU program baseline;
- Percentage of budget contracted with local and or Disabled Veteran Business Enterprise business;
- EM&V process, tracking, and incorporation into program design (381.1(f)(5)); and
- EM&V of project energy savings forecasts and energy savings realized (381.1(f)(5)).

NOTICE

East Bay Community Energy states this advice letter and related supplements were mailed and distributed in accordance with General Order 96-B, Section IV. As required by General Order 96-B, Section IV EBCE served these advice letters to the relevant parties on the R.13-11-005 service list.

PROTESTS, RESPONSES AND REPLIES

On November 10, 2021, the Public Advocates Office (CalPA) filed a protest and on November 12, 2021, PG&E filed a response to EBCE's AL 28-E. On November 19, 2021, EBCE filed a reply to the response. All were filed timely.

CalPA's Protest

CalPA states that pursuant to PU Code Section 381.1(f)(2), the Commission must certify that CCA energy efficiency programs approved under the ETA pathway "[a]dvance the public interest in maximizing cost-effective electricity savings and related benefits." In addition, CalPA points out that Ordering Paragraph 3 of D.14-01-033 states: CCA program portfolios must be cost-effective and EBCE's portfolio did not meet the threshold.

In support of EBCE's request to offer programs that fail to meet the cost-effectiveness threshold, EBCE cites D.21-05-031, which established new guidance for energy efficiency budget applications and permitted energy efficiency program administrators to propose programs in the equity and market support segments that are not subject to Commission cost-effectiveness requirements.

However, CalPA notes that EBCE's reliance on D.21-05-031 is erroneous, because D.21-05-031 explicitly does not establish new program requirements for ETA CCA programs stating: "We clarify that this decision is only intended to apply to energy efficiency program administrators who are either IOUs, RENs, or CCAs who have applied to administer energy efficiency programs. Nothing in this decision modifies the requirements of D.14-01-033 that apply to CCAs who elect to administer energy efficiency programs and funds"¹⁷

CalPA recommends that the Commission should reject without prejudice EBCE's AL 28-E as it fails to comply with Public Utilities Code Section 381.1(f)(2) and Commission requirements for CCA ETA portfolios.

¹⁷ D.21-05-031, pg 71.

PG&E's Response

PG&E makes several suggestions and requests in their response to EBCE's AL 28-E. First, they note that the two programs proposed by EBCE in AL 28-E have significant overlap with programs offered by PG&E. PG&E adds that this is especially true for EBCE's proposed commercial P4P program, which targets all building types and includes any measure eligible measures and technology types.

PG&E states that if the Commission approves EBCE's programs, coordination between ECBE and other energy efficiency PAs working in the same territory is critical to minimize customer confusion, duplication of effort, and double-dipping. PG&E appreciates EBCE's acknowledgement of the need to coordinate on programs. However, PG&E recommends that a formal coordination mechanism, like a Joint Cooperation Memorandum (JCM), is established between the two PAs. PG&E adds that formal coordination, like JCMs, help ensure that both PAs agree on coordination efforts like data sharing, marketing plans, ongoing communication structure, and how third-party program implementation contractors relate to each other's programs. Finally, they add that it helps establish communication pathways and awareness to avoid situations where customers unknowingly pursue participation in duplicative programs only to find that they must choose one, after PAs have spent duplicative resources recruiting and initiating projects.

Secondly, PG&E adds that the timing of EBCE's submission, and its inclusion of potentially duplicative and overlapping programs, underscores the need for alignment between the portfolio planning schedules of all PAs. As PG&E has previously noted, coordination between PAs who work in overlapping territories or serve overlapping customer populations is better facilitated when all PAs plan their programs and budgeting on the same schedule. They add that because EBCE's AL 28-E was filed ten days before the original due date for existing PA's 2022-3 Budget Advice Letters. Thus, PG&E could not consider EBCE's potential programs when planning its 2022-3 portfolio—nor could EBCE consider PG&E's plans when designing its programs. PG&E's Budget AL includes cost recovery for budgets of EE PAs that were authorized by the Commission as of 10/31/2021 – thus EBCE's 2021 funding request is not reflected in PG&E's Budget Advice Letter. PG&E encourages the Commission to continue to contemplate how timing issues such as these may be resolved, and to seek input from stakeholders on the best path forward.

EBCE's Reply

In their reply to CalPA's protest, EBCE states that AL 28-E adopts the market segmentation approach established in D. 21-05-031 so EBCE can offer programs directly benefitting low- and moderate-income households. EBCE notes that in D. 21-05-031, the segmentation approach was created to address situations where equity and market support programs were "at risk of being cut from the portfolios due to pressure on overall portfolio cost-effectiveness."¹⁸ EBCE adds CalPA's approach is inappropriate because it would deny EBCE the segmentation approach, forcing EBCE to proceed down a path that increases inequity.

EBCE states that their initial forecasted TRC the Commercial P4P Program is 1.00 with a forecasted Program Administrator Cost PAC of 1.44. They add that EBCE's first year forecasted program portfolio TRC is 0.88 and forecasted first-year Program Administrator Cost ("PAC") for the portfolio is 1.17. EBCE forecasts that TRC will improve in subsequent implementation years, after the program is ramped up.

Finally, EBCE requests that the Commission reject PG&E's recommendation to place formal requirements on program planning and timing. They point to D.14-01-033, where the Commission states that CCAs having to wait for the next funding cycle for energy efficiency funds could "deprive CCAs of the ability to access energy funds during crucial start-up and initial opt-out periods."¹⁹ Additionally, EBCE adds that as noted in D. 14-01-033, first-time CCAs "may file their applications at any time," therefore PG&E's requests to formally require timing of new PAs entering energy efficiency markets is inappropriate.

EBCE welcomes additional coordination with PG&E to avoid duplicative enrollment efforts and outreach in overlapping communities. However, EBCE believes the specific recommendations laid out by PG&E in response to EBCE AL-28-E seeks to modify language adopted in D. 14-01-033, and thus not appropriate as a response to this AL.

No parties filed any protests, comments, or responses to EBCE's supplemental AL 28-E-A.

¹⁸ D.21-05-031, pg 13.

¹⁹ D. 14-01-033, Findings of Fact 12, p. 42.

DISCUSSION

Review of Funding Request

The formula for a CCA's maximum funding to ETA EE programs, is based on the applicable IOU portfolio budget funding from the most recently authorized program cycle. The last CPUC-approved EE budget for PG&E, when EBCE filed AL 28-E, was its 2021 Budget AL 4303-G/5436-E, with an approved budget of \$220,967,635.²⁰ To determine the percentage of the total amount of the non-bypassable funds for its EE Plan that EBCE is eligible for, CPUC staff categorized what programs and budgets in PG&E 2021 Budget AL are considered "statewide" or "regional" programs and excluded these programs from the calculation for a CCAs' maximum funding.²¹

For the purposes of this calculation, the CPUC considers the following EE programs as "statewide" or "regional": the Residential EE program; the Commercial EE program; the Industrial EE program; the Agricultural EE program; the Lighting program; the Integrated Demand Side Management program; the Finance program; the Codes and Standards program; the Emerging Technology program and the Workforce Education and Training program; and the Institutional EE Partnerships. The total budget for these programs is \$213,523,055. Local or geographically restricted programs that are included for determining the percentage of EBCE's non-bypassable funds that can be used for its EE Plan includes the Local Government Energy Action Resources²² and the Public Local Government Partnership Third Party Programs.²³ These programs have a total budget of \$7,444,580.²⁴

²⁰ PG&E budget as approved of in the non-standard disposition of PG&E AL 4303-G/5436-E.

²¹ The formula for total amount to a CCA electing to administer is calculated using non-bypassable funds the CCA collects from their customer base. Approved funds for CCA to use to administer approved CCA programs however still pass through to the IOU as a non-bypassable charge, and the IOU allocates the portion as approved here back to the CCA to administer their EE programs

²² For more information on Local Government Energy Action Resources see: <https://cedars.sound-data.com/programs/PGE2110051/details/2021>.

²³ For more information on the Third-Party Placeholder for LGPs see: New 3P Placeholder - Public LGP see: https://cedars.sound-data.com/programs/PGE_3P_Pub/details/2021.

²⁴ See Appendix A Table 1 "PG&E Total Portfolio Budget Breakdown by Funding Category" for a breakdown of how the CPUC categorized PG&E's EE programs.

To determine EBCE's maximum EE funding the CPUC divided the total budget of the programs that are not categorized as "statewide" or "regional" by PG&E's total EE budget or \$7,444,580 divided by \$220,967,635, to get a percentage of the budget not categorized as "statewide" or "regional", which is 3.37%. Finally, we multiplied 3.37% by the total electricity EE non-bypassable charge from EBCE customers which is \$133,201,953.98 to get the maximum funding that EBCE can request of \$13,463,049 over the three-year period, based on sales forecasts provided by EBCE. Thus, the CPUC will approve EBCE's proposed budget.

Review of Compliance with Public Utilities Code Section 381.1 (f) Criteria

Consistency with the Goals in Public Utilities Code Sections 381.1. and 399.4

PU Code Section 381.1 encourages the procurement of cost-effective EE and conservation programs by CCAs that advance the public interest and accommodate the need for broader statewide and regional programs. PU Code Section 399.4 (a) states that prudent EE investments should continue to be made to "produce cost-effective energy savings, reduce customer demand, and contribute to the safe and reliable operation of the electric distribution grid."

Consistent with the guidance on cost-effectiveness in PU Code Sections 381.1 and 399.4(a), the EBCE's EE Plan forecasts the achievement of cost-effective reductions in energy and demand, with a TRC of 1.07 and a PAC of 1.57.

PU Code Section 399.4(b)(1) states that, in evaluating EE investments, the CPUC shall require that:

"If a customer or contractor is the recipient of a rebate or incentive offered by a public utility for an energy efficiency improvement or installation of energy efficient components, equipment, or appliances in a building, the public utility shall provide the rebate or incentive only if the customer or contractor certifies that the improvement or installation has complied with any applicable permitting requirements, including any applicable specifications or requirements set forth in the California Building Standards Code (Title 24 of the California Code of Regulations). If a contractor performed the installation or improvement, that the contractor holds the appropriate license for the work performed."

EBCE states that it will comply with PU Code Section 399.4(b)(1) by requiring all installing contractors or non-residential customers who receive a rebate or incentive to certify that they have complied with Title 24.²⁵

PU Code Section 399.4(d) states that the CPUC, in a new or existing proceeding, shall review and update its policies governing EE programs funded by utility customers. In updating its policies, the CPUC shall, at a minimum do all the following:

1. Authorize market transformation programs with appropriate levels of funding to achieve deeper EE savings.
2. Authorize pay for performance programs that link incentives directly to measured energy savings. As part of pay for performance programs authorized by the CPUC, customers should be reasonably compensated for developing and implementing an energy efficiency Plan, with a portion of their incentive reserved pending post project measurement results.
3. Authorize programs to achieve deeper savings through operational, behavioral and retrocommissioning activities.
4. Ensure that customers have certainty in the values and methodology used to determine energy efficiency incentives by basing the amount of any incentives provided by gas and electrical corporations on the values and methodology contained in the executed customer agreement. Incentive payments shall be based on measured results.

CPUC staff interprets PU Code Section 399.4(d) to refer to the ratepayer funded EE portfolio as offered throughout the state and not a requirement that all individual PAs EE offerings meet all the policies outlined in PU Code Section 399.4(d). The EE portfolios as offered by California's ratepayer funded PAs throughout the state meet these objectives and thus so would EBCE's EE plan. Therefore, the CPUC certifies that EBCE's EE Plan has demonstrated compliance with the criteria set forth in PU Code Section 381.1(f)(1).

²⁵ EBCE AL 28-E, Attachment A, pg 21.

Advances the Public Interest in Maximizing Cost-Effective Electricity Savings and Related Benefits

EBCE forecasts their EE program has cost effectiveness of a 1.07 TRC and a 1.56 PAC, which meets the minimum threshold for cost effectiveness of a CCA who elect to administer EE programs. The CPUC certifies that EBCE's EE Plan has demonstrated compliance with the criteria set forth in PU Code Section 381.1(f)(2).

Accommodation of Statewide and Regional Programs

Accommodation of statewide and regional programs as defined in Section 381.1(f)(3) and D.14-01-033 includes the requirement that "a CCA should include in its plan marketing and branding strategies to minimize customer confusion, and to otherwise distinguish between CCA programs and any similar statewide or regional programs that may also be ongoing."²⁶

EBCE states that it is well-known within the local community and will provide its program to only their own customers. EBCE adds that its proposed program has been designed to provide value-added and complementary services within existing local and regional energy programs, leveraging EBCE's position as the customer's electricity provider to ensure their program is clearly distinguished as unique and offered exclusively to EBCE customers. EBCE's program marketing will also be targeted to EBCE customers and will clearly describe which ratepayers will be eligible to participate and their marketing will distinguish their offering from other PAs.

EBCE adds that it will consistently recommend leveraging statewide and regional programs when and where they can provide the best services to its customer base. A customer's qualification into statewide and regional programs will be made part of EBCE's prequalification process, which will ensure that customers are channeled to the most appropriate program or service. In addition, EBCE will coordinate with PG&E, BayREN and third-party program implementers to ensure that EBCE customers have the most accurate, up-to-date materials on available programs. Finally, EBCE adds that where feasible and especially when relevant to their program, EBCE plans to start collaborating with the selected third-party vendors early and when possible before the

²⁶ D.14-01-033, pg 19.

launch of a third-party programs to minimize customer confusion to the greatest extent possible.

The CPUC believes that EBCE has provided sufficient information showing that its marketing materials will clearly distinguish its program from other PAs' programs and will target only their own customers. EBCE's AL indicates that it also plans to work with PG&E, BayREN and third-party implementers in its region to ensure that the customers have access to all available opportunities. Therefore, the CPUC certifies that EBCE's EE Plan has demonstrated compliance with the criteria set forth in Section 381.1(f)(3).

Auditing and Reporting

Decision 14-01-033 states that a "CCA should conduct financial and management audits of its EE programs and provide a copy of the audits to the CPUC upon request." The financial audit will consist of a review of the financial statements of the CCA's EE operations to determine whether the statements are accurate, complete, and consistent with CPUC policy and standard accounting practices. The management audit will assess the CCA's management procedures and the effective use of resources in implementing its EE portfolio.²⁷

EBCE states that it performs annual financial audits using generally accepted accounting principles specific to government entities. These reports are publicly available and will be provided to the CPUC upon request. As a CCA, once EBCE's EE Plan is certified and their program begins, its current auditing procedures will be extended to include EE program administration data. This will ensure appropriate accounting controls for EE program funds.

Per the requirement of the Governmental Accounting Standards Board Statement No. 34, the management's discussion and analysis will be included to supplement the basic financial statements. To evaluate the effective use of resources and management procedures, EBCE will also complete all regulatory filings and reports as directed by CPUC staff.

²⁷ D.14-01-033, pg 29.

These documents will provide the results of program efforts that can be evaluated against the performance metrics identified by EBCE, including adherence to cost-effectiveness requirements. Thus, the CPUC certifies that the EBCE is compliant with the auditing and reporting requirements set forth in PU Code Section 381.1(f)(4).

EM&V Protocols

D.14-01-033 requires the CCA to establish its own EM&V protocols. However, the CPUC encourages CCAs to use the same EM&V requirements that apply to other EE PAs. The CPUC's role is to certify that a CCA's plan includes EM&V protocols and the various roles of the program administrator and CPUC in conducting evaluations. In its AL, the CCA should describe clearly and completely the EM&V protocols it will use.²⁸

EBCE states that it will contract with an independent third-party to perform process evaluation or market studies to determine the effectiveness and needs for the successful implementation of the program and future improvements. EBCE-led studies will be performed according to the CPUC oversight process of IOU EM&V projects as detailed in the EE EM&V Plan. EBCE will be subject to the same protocol as IOUs for CPUC-directed impact evaluations to determine actual energy savings, benefits, costs, and goal achievement as directed in D.05-01-055. EBCE assures the CPUC that the total EM&V budget will not exceed 3% of their portfolio budget.²⁹

It seems clear that EBCE understands the different roles of CPUC, independent consultants and PAs, who are involved in the EM&V process. To ensure compliance with the CPUC approved cap on EM&V we may data request EBCE and require that they break out EM&V costs in their annual reports. However, their AL does not raise any major concerns that they are out of compliance with the CPUC requirements. Thus, the CPUC certifies EBCE's EM&V protocols as set forth in PU Code Section 381.1(f)(5).

Performance Metrics

D.14-01-033 states that "the CCA should provide reports that meets the requirements and format the CPUC has established for IOUs and RENs, as set forth in the Policy

²⁸ Ibid.

²⁹ EBCE AL 28-E-A, pg 8.

Manual Version V.”³⁰ The process for developing Program Performance Metrics (performance metrics) is described in Appendix 2 of D.09-09-047, which approved 2010-2012 EE portfolios and budget. The proposed performance metrics shall comply with the following principles:

- The metrics shall be designed for simplicity and cost effectiveness when considering data collection and reporting requirements.
- Integrated metrics shall be developed for programs that employ more than one technology or approach, such as whole building programs.
- Program models and logic should be dynamic and change in response to external, e.g., market conditions, and internal conditions.
- The metrics shall link short-term and long-term strategic planning goals and objectives to identified program logic models.
- Performance metrics shall be maintained and tracked in the Energy Efficiency Groupware Application database (or a similar database to be determined under the guidance of CPUC staff).

EBCE provides the following Performance Metrics to indicate progress toward meeting the goals and objectives of EBCE. The specific objective of PU Code Section 381.1(f) that each metric addresses (if applicable) is included in parenthesis.

- Program energy savings (381.1(f)(2));
- Tracking and serving underserved communities, including hard-to-reach (HTR) commercial customers (381.1(f)(1));
- Cost-effectiveness tool output;
- Tracking their program’s cost-effectiveness annually (381.1(f)(4))
- Number of projects referred to other EE or other Distributed Energy Resource (“DER”) programs (381.1(f)(3))
- Percentage of recommended measures installed by customers (381.1(f)(4));
- Percentage of customers who receive electrification measures;
- Percentage of customers who receive education on time of use rates and peak management tools;
- Increase in participation among disadvantaged community customers relative to existing IOU program baseline;

³⁰ D.14-01-033, pg 30.

- Percentage of budget contracted with local and or Disabled Veteran Business Enterprise business;
- EM&V process, tracking, and incorporation into program design (381.1(f)(5)); and
- EM&V of project energy savings forecasts and energy savings realized (381.1(f)(5)).

EBCE's list of metrics submitted are relatively strong, but could be improved upon; especially in providing clearer metrics that states how "the metrics shall link their short-term and long-term strategic planning goals and objectives to identified program logic models."

Resolutions E-4518, E-4917, E-5050, E-5166, E-5180 and E-5197 which approved other CCA requests for certification to elect to administer their EE Plans also found similar problems, though many of these CCAs' EE Plans provided less comprehensive, clear and measurable proposed metrics than EBCE did. Similar to the resolutions approving those EE Plans, we determine that EBCE's metrics could be improved upon, but are sufficient to grant EBCE's request for certification, as it has met the criteria set forth in Section 381.1(f)(6) and is certified. In addition, we encourage EBCE to review the metrics that have been filed by all the PAs in their business plans on March 4, 2022 and the subsequent decision. Once there has been a decision on the PAs business plans, EBCE should make any needed updates to its metrics in its annual reports.

Finally, we are seeking to continually improve the development of robust and clearly measurable metrics for all CCAs who pursue the ETA route to administering EE programs. In this instance, CPUC staff may work with EBCE to improve upon tracking metrics. For any future ALs filed by CCAs who pursue the ETA route we expect metrics that are more like those required of the PAs, including units of measurement, market baselines and targets, methodology for collecting data to track progress towards a target. That being said, the CPUC certifies EBCE's proposed metrics as set forth as compliant with PU Code Section 381.1(f)(6).

Analysis of Party Protests, Responses and EBCE's Reply Comments

EBCE's AL 28-E fails to meet the cost-effectiveness threshold

CalPA correctly points out that EBCE's AL 28-E failed to meet the cost-effectiveness threshold for CCAs who ETA and inappropriately included their proposed Low-and-Moderate income residential program in the "equity" segment. D.21-05-031, which created the new equity and market support segments, was clear that these new segments only applied CCAs, IOUs and RENs that submitted applications and not CCAs who are approved through the ETA process.³¹

However, this issue is moot with the filing of EBCE's supplemental AL 28-E-A, which removed the residential program from their EE Plan that they classified as an equity program and the supplemental AL exceeded their cost-effectiveness threshold with a forecasted TRC of 1.07 and a PAC of 1.57.

CPUC staff has determined that EBCE's supplemental AL 28-E-A meets the ETA requirements included in PU Code Section 381.1(e) and (f) (2), which requires CCAs who ETA to be cost-effective. Thus, we will not direct any changes to EBCE's proposed programs based on CalPA's comments.

EBCE's proposed programs overlap with PG&E offerings

In their comments, PG&E raised concerns with the programs offered by EBCE's potentially duplicating PG&E's efforts. PG&E adds that should the Commission approve EBCE's programs coordination between ECBE and other energy efficiency PAs working in the same territory is critical to minimize customer confusion, duplication of effort, and double-dipping. We share PG&E concerns, especially given the size of EBCE's budget relative to other CCAs who have pursued the ETA process and because PG&E will be offering a similar Market Access Program for commercial sector and proposed to offer several new P4P programs in their Business Plans.

However, we do not agree with PG&E that a formal regulatory vehicle is needed to ensure that EBCE and PG&E avoid double-dipping and minimizing customer

³¹ D.21-05-031, pg 71,

confusion. Instead, CPUC Energy Division staff through their oversight role can work with both PG&E and EBCE to mitigate these risks.

CPUC staff has determined that PCE meets the ETA requirements included in PU Code Section 381.1(e) and (f) (1) – (6). Thus, we will not direct any changes to EBCE's program as filed in their supplemental AL 28-E-A based on PG&E's comments.

Request for Commission to coordinate the timing of new PA's entry into the ratepayer-funded energy efficiency market

We appreciate PG&E raising the challenges they have with budgeting for new PAs who are not approved on the same timeline as the IOUs, MCE and already established RENs. We understand and share those concerns, especially with EBCE whose budget request is much larger any previous CCA who has been approved through the ETA process. However, as stated on page 16 of D.14-01-033, first time CCA applicants, whether they pursue the ETA or "apply-to-administer" approach may file at anytime they are prepared to do so. We also encourage PG&E and all stakeholders to propose how new PA filings could be better aligned with IOU budget planning cycles in the current EE proceeding (R.13-11-005) or application proceeding (A.22-02-005).

Require all program administrators file JCMs

Finally, PG&E requested that the Commission require EBCE and PG&E to file a JCM. In resolutions E-5166 and E-5180, we determined that neither the timing nor venue was appropriate for the Commission to require JCMs between all other PAs and CCAs who elect-to-administer EE programs. However, given the size of EBCE's budget compared to previous CCAs who have pursued the ETA pathway and similarity of their program offering with similar efforts not only offered by PG&E, but also BayREN we will require that EBCE files a JCM with BayREN and PG&E. EBCE's JCM with BayREN and PG&E shall be filed as a Tier 2 AL within 60 days of the adoption of this resolution. Subsequently, EBCE will file their JCM in their annual reports for program years 2023, 2024 and 2025.

COMMENTS

Public Utilities Code Section 311(g)(1) provides that this Resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of

the CPUC. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day review and 20-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the CPUC's agenda no earlier than 30 days from today.

FINDINGS:

1. East Bay Clean Energy exercised its election right under Public Utilities Code Section 381.1(e) and (f) (1) – (6) and Decision 14-01-033 by submitting its Energy Efficiency Program Administration Plan as a Tier 3 advice letter to the California Public Utilities Commission and serving it on all parties on the proceeding R.13-11-005 on October 22, 2021.
2. Decision 14-01-033 adopted a methodology and definition of terms to determine the maximum amount of eligible funding Community Choice Aggregators may elect to administer.
3. Using the adopted methodology from Decision 14-01-033, the maximum amount of funds East Bay Clean Energy is eligible to collect funds for the administration of their its Energy Efficiency Program Administration Plan of up-to \$13,463,049.
4. Decision 14-01-033 provided further guidance to Community Choice Aggregators who elect to administer energy efficiency programs on how to seek California Public Utilities Commission approval to elect to administer ratepayer funded energy efficiency programs without filing a formal application. The decision adopted the processes in Public Utilities Code Section 381.1(e) – (g) and the June 20, 2012, Administrative Law Judge's ruling in R.09-11-014.
5. East Bay Clean Energy's Energy Efficiency Program Administration Plan was approved by its governing board and contains the plan's funding requirements, its Energy Efficiency Program Administration Plan description, a cost-effectiveness analysis, and the duration of their Energy Efficiency Program Administration Plan.

6. To administer its Energy Efficiency Program Administration Plan, East Bay Clean Energy seeks \$13,463,049 in funds collected by Pacific Gas and Electric from East Bay Clean Energy's customers through non-bypassable charges (specifically, the Procurement Energy Efficiency Revenue Adjustment Mechanism and the Public Purpose Program Revenue Adjustment Mechanism).
7. The California Public Utilities Commission directs Pacific Gas and Electric to transfer \$13,463,049 to East Bay Clean Energy to implement its Energy Efficiency Program Administration Plan.
8. Given the size of the budget of East Bay Clean Energy and potential duplication of programmatic efforts of Pacific Gas and Electric and the Bay Area Regional Energy Network, the Commission finds it reasonable that East Bay Clean Energy will have to file Joint Cooperation Memos with these overlapping program administrators.
9. East Bay Clean Energy's Energy Efficiency Program Administration Plan is consistent with the goals of the programs established pursuant to Public Utilities Code Sections 381.1 and 399.4 and Decision 14-01-033 and meets the Public Utilities Code Section 381.1(f)(1) criteria.
10. East Bay Clean Energy's Energy Efficiency Program Administration Plan meets the cost-effectiveness requirements and thus meet Public Utilities Code Section 381.1(f)(2) criteria.
11. East Bay Clean Energy's Energy Efficiency Program Administration Plan meets the Public Utilities Code Section 381.1(f)(3) criteria.
12. East Bay Clean Energy's Energy Efficiency Program Administration Plan meets the Public Utilities Code Section 381.1(f)(4) criteria.
13. East Bay Clean Energy's evaluation, measurement, and verification protocols established by the Community Choice Aggregator. East Bay Clean Energy's efficiency evaluation, measurement, and verification proposal meet the Public Utilities Code Section 381.1(f)(5) criteria.

14. East Bay Clean Energy's Energy Efficiency Program Administration Plan includes metrics that meets the minimal requirements set forth in the Public Utilities Code Section 381.1(f)(6) criteria.

THEREFORE, IT IS ORDERED THAT:

1. East Bay Clean Energy's Energy Efficiency Program Administration Plan, as submitted in their supplemental advice letter 28-E-A on March 10, 2022, is certified pursuant to Public Utilities Code Section 381.1(e) and (f) (1) – (6)
2. Pacific Gas and Electric shall transfer to East Bay Clean Energy's \$13,463,049, which East Bay Clean Energy requested utilizing the funding cap formula adopted in Decision 14-01-033.
3. East Bay Community Energy is directed to file a Joint Cooperation Memo as a Tier 2 advice letter with Pacific Gas and Electric and the Bay Area Regional Energy Network within 45 days of the adoption of this resolution. Subsequently, East Bay Community Energy will file their Joint Cooperation Memo in their annual reports for to cover program years 2023, 2024 and 2025.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on September 15, 2022; the following Commissioners voting favorably thereon:

Rachel Peterson
Executive Director

APPENDIX A**Table 1. PG&E Total Portfolio Budget Breakdown by Funding Category**

	PG&E's approved budget request in AL 4303-G/5436-E or the 2021 Annual Budget AL	PG&E's approved budget request in AL 4303-G/5436-E or the 2021 Annual Budget AL
Program Category	Budget Excluded	Budget Included
Statewide and Regional	\$213,523,055	\$0
Local	\$0	\$7,444,580
Total Included	\$7,444,580	
Total Portfolio	\$220,967,635	
% Included	3.37	
% Excluded	96.63	

Table 2. Calculation of EBCE Maximum Funding

EBCE Maximum Funding	Total Electricity EE Non-bypassable Charges from EBCE Customers	Percentage of PG&E's Budget Not Dedicated to Statewide and Regional Programs
\$13,463,049	\$133,201,953.98	3.37%